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SUBJECT: South China's Foreign Lawyers - Strangers in a Strange Land

¶1. (SBU) Foreign attorneys in south China are subject to tight restrictions, including prohibitions on advising on Chinese law, with regard to the nature and scope of their professional activities. Traditional Western legal touchstones such as confidentiality, conflict of interest, and legal precedent are not

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consistently respected within the Chinese system. A poorly-developed, corruption-ridden court system and the uneven quality of regional local talent adds to frustration felt by attorneys, as well as their clients. End Summary

Tight Restrictions

¶2. (SBU) Foreign law firms (FLFs) in Guangzhou and elsewhere in China are subject to strict limitations on the kind of legal services they can offer. They are permitted to provide counsel to clients on international law, as well as their own national law, but are expressly prohibited from advising on Chinese law. A French attorney who practices in a firm with offices in several Chinese cities, including Guangzhou, commented that they operate within the regulations by routinely advising foreign clients "on the impact of foreign law on Chinese law." One attorney stated that the activities of FLFs have come under increasing scrutiny, but there have been no reported instances in Guangzhou of the government taking steps to close a FLF for illegal practice of law.

¶3. (SBU) In addition, FLFs cannot appear in Chinese courts, and are obliged to work with a Chinese law firm which appears in court in an official capacity for their clients. FLFs do employ local Chinese attorneys, but these professionals are required to resign from the Chinese bar once they start working for the FLF. Foreign attorneys in Guangzhou have commented that some local Chinese law firms are becoming more sophisticated and are beginning to compete directly with FLFs. However, they believe that this is less true in Guangzhou and Shenzhen than in other "first-tier" Chinese cities such as Beijing and Shanghai. In general, finding high quality local law firms to act as partners for FLFs is difficult.

¶4. (U) The good news: the current situation actually has represents a relaxation of previous restrictions. Until the mid-1990s, FLFs existed only as consultants; at that time, the State Council and the Ministry of Justice provided a legal basis for foreign law firms to formally practice in China. Prior to China's accession to the World Trade Organization, though, foreign firms were limited to one "unique" office. The government committed to removing this restriction post-WTO, but timing requirements remain in place: upon receiving a new license, a firm must still wait three years before applying for an additional office or branch location.

Lack of a Western Legal Tradition

15. (SBU) Prohibited from forming joint ventures with local firms, FLFs must establish commercial or "privileged" partnerships. A senior lawyer from a European firm lamented the challenges of working with local law firms: apart from not being able to share common letterheads, he indicated, most Guangzhou law firms do not abide by Western-style rules regarding ethics, professionalism, and confidentiality. FLFs must advise their clients that, among other

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concerns, Chinese law firms are not bound by conflict of interest rules, resulting in the potential of the local partner firm representing other parties with adverse interests to the FLF's client. Fred Hong, an American attorney with fourteen years experience practicing in Guangdong province (following a sixteen year legal career in southern California), expressed fewer concerns regarding his work with Chinese counterparts, but stressed that his partnerships with local firms are "long-standing relationships" in which trust and reputations for reliability have been earned over many years.

16. (SBU) The uneven quality of Chinese attorneys can lead to frustrations both in and out of the courtroom. Chinese courts permit a citizen or corporation to engage any person to appear as a legal representative through the filing of a power of attorney (Dai li ren, or "authorized representative"). American lawyer David Buxbaum, who has advised clients in Guangzhou since the early 1980s and was one of the pioneers in explaining trade law to U.S. and Chinese parties, uses the POA to appear regularly in Chinese courts as a legal representative, not as a licensed attorney. Although the pass rate for the Chinese bar exam is low - between 5 and 9 percent - foreign attorneys here argue that this has not yet created a class of sophisticated legal professionals. Local attorneys are often not aware of basic principles of Chinese law and procedure. One foreign attorney stated that "you need to lead a lot" when working with Guangdong province lawyers; a French attorney maintained that local attorneys will often stick to positions having no legal basis,

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obstructing efforts to resolve cases appropriately.

Frustrating Appellate Practice

17. (SBU) Foreign attorneys who practice in Guangzhou confirm reports of poor judicial quality and outright corruption. Limited discovery rights make the obtaining of necessary records and documentation extremely problematic. Chinese courts do not abide by the centuries-old Western concept of precedent, making prior caselaw - such as it exists - effectively irrelevant. The appeals process also does not follow the standard Western model: cases are typically reviewed de novo, with appellate courts routinely re-examining the circumstances of a case and ruling on questions of fact, in addition to those of law. As a result, there is a low incentive for parties to make much effort or create any type of record at the trial court level, as most cases are appealed as a matter of course.

One attorney said he is often quite frank with his foreign clients who wish to pursue money judgments against parties in the local courts: "I almost always tell them that they should kiss it goodbye".

Slow development

18. (SBU) However, foreign attorneys here also report signs of progress. Although improvement in overall attorney quality remains slow, transparency within the legal system is gradually improving. "E-government" initiatives have made access to documents somewhat easier and the practice of law more straightforward. One attorney also commented favorably on the accessibility of some local officials, as compared to Western counterparts, to directly discuss administrative and property law issues. An American attorney observed that the Chinese legal system has only had a few decades to mature - it takes a long time for individuals, as well as the

system, to develop a "pure legal sense, but it's being picked up gradually."

Goldberg